

VI. TRIAL	TITLE VI. TRIAL
Rule 23. Trial by Jury or by the Court	Rule 23. Jury or Nonjury Trial
<p>(a) Trial by Jury. Cases required to be tried by jury shall be so tried unless the defendant waives a jury trial in writing with the approval of the court and the consent of the government.</p>	<p>(a) Jury Trial. If the defendant is entitled to a jury trial, the trial must be by jury unless:</p> <ol style="list-style-type: none"> (1) the defendant waives a jury trial in writing; (2) the government consents; and (3) the court approves.
<p>(b) Jury of Less Than Twelve. Juries shall be of 12 but at any time before verdict the parties may stipulate in writing with the approval of the court that the jury shall consist of any number less than 12 or that a valid verdict may be returned by a jury of less than 12 should the court find it necessary to excuse one or more jurors for any just cause after trial commences. Even absent such stipulation, if the court finds it necessary to excuse a juror for just cause after the jury has retired to consider its verdict, in the discretion of the court a valid verdict may be returned by the remaining 11 jurors.</p>	<p>(b) Jury Size.</p> <ol style="list-style-type: none"> (1) In General. A jury consists of 12 persons unless this rule provides otherwise. (2) Stipulation for a Smaller Jury. At any time before the verdict, the parties may, with the court's approval, stipulate in writing that: <ol style="list-style-type: none"> (A) the jury may consist of fewer than 12 persons; or (B) a jury of fewer than 12 persons may return a verdict if the court finds it necessary to excuse a juror for good cause after the trial begins. (3) Court Order for a Jury of 11. After the jury has retired to deliberate, the court may permit a jury of 11 persons to return a verdict, even without a stipulation by the parties, if the court finds good cause to excuse a juror.
<p>(c) Trial Without a Jury. In a case tried without a jury the court shall make a general finding and shall in addition, on request made before the general finding, find the facts specially. Such findings may be oral. If an opinion or memorandum of decision is filed, it will be sufficient if the findings of fact appear therein.</p>	<p>(c) Nonjury Trial. In a case tried without a jury, the court must find the defendant guilty or not guilty. If a party requests before the finding of guilty or not guilty, the court must state its specific findings of fact in open court or in a written decision or opinion.</p>

COMMITTEE NOTE

The language of Rule 23 has been amended as part of the general restyling of the Criminal Rules to make them more easily understood and to make style and terminology consistent throughout the rules. These changes are intended to be stylistic only.

In current Rule 23(b), the term "just cause" has been replaced with the more familiar term "good cause," that appears in other rules. No change in substance is intended.

Rule 24. Trial Jurors	Rule 24. Trial Jurors
<p>(a) Examination. The court may permit the defendant or the defendant's attorney and the attorney for the government to conduct the examination of prospective jurors or may itself conduct the examination. In the latter event the court shall permit the defendant or the defendant's attorney and the attorney for the government to supplement the examination by such further inquiry as it deems proper or shall itself submit to the prospective jurors such additional questions by the parties or their attorneys as it deems proper.</p>	<p>(a) Examination.</p> <ol style="list-style-type: none"> (1) <i>In General.</i> The court may examine prospective jurors or may permit the attorneys for the parties to do so. (2) <i>Court Examination.</i> If the court examines the jurors, it must permit the attorneys for the parties to: <ol style="list-style-type: none"> (A) ask further questions that the court considers proper; or (B) submit further questions that the court may ask if it considers them proper.
<p>(b) Peremptory Challenges. If the offense charged is punishable by death, each side is entitled to 20 peremptory challenges. If the offense charged is punishable by imprisonment for more than one year, the government is entitled to 6 peremptory challenges and the defendant or defendants jointly to 10 peremptory challenges. If the offense charged is punishable by imprisonment for not more than one year or by fine or both, each side is entitled to 3 peremptory challenges. If there is more than one defendant, the court may allow the defendants additional peremptory challenges and permit them to be exercised separately or jointly.</p>	<p>(b) Peremptory Challenges. Each side is entitled to the number of peremptory challenges to prospective jurors specified below. The court may allow additional peremptory challenges to multiple defendants, and may allow the defendants to exercise those challenges separately or jointly.</p> <ol style="list-style-type: none"> (1) <i>Capital Case.</i> Each side has 20 peremptory challenges when the government seeks the death penalty. (2) <i>Other Felony Case.</i> The government has 6 peremptory challenges and the defendant or defendants jointly have 10 peremptory challenges when the defendant is charged with a crime punishable by imprisonment of more than one year. (3) <i>Misdemeanor Case.</i> Each side has 3 peremptory challenges when the defendant is charged with a crime punishable by fine, imprisonment of one year or less, or both.

(c) Alternate Jurors.

(1) *In General.* The court may empanel no more than 6 jurors, in addition to the regular jury, to sit as alternate jurors. An alternate juror, in the order called, shall replace a juror who becomes or is found to be unable or disqualified to perform juror duties. Alternate jurors shall (i) be drawn in the same manner, (ii) have the same qualifications, (iii) be subject to the same examination and challenges, and (iv) take the same oath as regular jurors. An alternate juror has the same functions, powers, facilities and privileges as a regular juror.

(2) *Peremptory Challenges.* In addition to challenges otherwise provided by law, each side is entitled to 1 additional peremptory challenge if 1 or 2 alternate jurors are empaneled, 2 additional peremptory challenges if 3 or 4 alternate jurors are empaneled, and 3 additional peremptory challenges if 5 or 6 alternate jurors are empaneled. The additional peremptory challenges may be used to remove an alternate juror only, and the other peremptory challenges allowed by these rules may not be used to remove an alternate juror.

(3) *Retention of Alternate Jurors.* When the jury retires to consider the verdict, the court in its discretion may retain the alternate jurors during deliberations. If the court decides to retain the alternate jurors, it shall ensure that they do not discuss the case with any other person unless and until they replace a juror during deliberations. If an alternate replaces a regular juror after deliberations have begun, the court shall instruct the jury to begin its deliberations anew.

(c) Alternate Jurors.

(1) *In General.* The court may impanel up to 6 alternate jurors to replace any jurors who are unable to perform or who are disqualified from performing their duties.

(2) Procedure.

(A) Alternate jurors must have the same qualifications and be selected and sworn in the same manner as any other juror.

(B) Alternate jurors replace jurors in the same sequence in which the alternates were selected. An alternate juror who replaces a juror has the same authority as the other jurors.

(3) *Retention of Alternate Jurors.* The court may retain alternate jurors after the jury retires to deliberate. The court must ensure that a retained alternate does not discuss the case with anyone until that alternate replaces a juror or is discharged. If an alternate replaces a juror after deliberations have begun, the court must instruct the jury to begin its deliberations anew.

(4) *Peremptory Challenges.* Each side is entitled to the number of additional peremptory challenges to prospective alternate jurors specified below, which may be used only to remove alternate jurors.

(A) *One or Two Alternates.* One additional peremptory challenge is permitted when one or two alternates are impaneled.

(B) *Three or Four Alternates.* Two additional peremptory challenges are permitted when three or four alternates are impaneled.

(C) *Five or Six Alternates.* Three additional peremptory challenges are permitted when five or six alternates are impaneled.

COMMITTEE NOTE

The language of Rule 24 has been amended as part of the general restyling of the Criminal Rules to make them more easily understood and to make style and terminology consistent throughout the rules. These changes are intended to be stylistic only, except as noted below.

In restyling Rule 24(a), the Committee deleted the language that authorized the defendant to conduct voir dire of prospective jurors. The Committee believed that the current language was potentially ambiguous and could lead one incorrectly to conclude that a defendant, represented by counsel, could personally conduct voir dire or additional voir dire. The Committee believed that the intent of the current provision was to permit a defendant to participate personally in voir dire only if the defendant was acting pro se. Amended Rule 24(a) refers only to attorneys for the parties, i.e., the defense counsel and the attorney for the government, with the understanding that if the defendant is not represented by counsel, the court may still, in its discretion, permit the defendant to participate in voir dire. In summary, the Committee intends no change in practice.

Finally, the rule authorizes the court in multi-defendant cases to grant additional peremptory challenges to the defendants. If the court does so, the prosecution may request additional challenges in a multi-defendant case, not to exceed the total number available to the defendants jointly. The court, however, is not required to equalize the number of challenges where additional challenges are granted to the defendant.

Rule 25. Judge; Disability	Rule 25. Judge's Disability
<p>(a) During Trial. If by reason of death, sickness or other disability the judge before whom a jury trial has commenced is unable to proceed with the trial, any other judge regularly sitting in or assigned to the court, upon certifying familiarity with the record of the trial, may proceed with and finish the trial.</p>	<p>(a) During Trial. Any judge regularly sitting in or assigned to the court may complete a jury trial if:</p> <ul style="list-style-type: none"> (1) the judge before whom the trial began cannot proceed because of death, sickness, or other disability; and (2) the judge completing the trial certifies familiarity with the trial record.
<p>(b) After Verdict or Finding of Guilt. If by reason of absence, death, sickness or other disability the judge before whom the defendant has been tried is unable to perform the duties to be performed by the court after a verdict or finding of guilt, any other judge regularly sitting in or assigned to the court may perform those duties; but if that judge is satisfied that a judge who did not preside at the trial cannot perform those duties or that it is appropriate for any other reason, that judge may grant a new trial.</p>	<p>(b) After a Verdict or Finding of Guilty.</p> <ul style="list-style-type: none"> (1) After a verdict or finding of guilty, any judge regularly sitting in or assigned to a court may complete the court's duties if the judge who presided at trial cannot perform those duties because of absence, death, sickness, or other disability. (2) The successor judge may grant a new trial if satisfied that: <ul style="list-style-type: none"> (A) a judge other than the one who presided at the trial cannot perform the post-trial duties; or (B) a new trial is necessary for some other reason.

COMMITTEE NOTE

The language of Rule 25 has been amended as part of the general restyling of the Criminal Rules to make them more easily understood and to make style and terminology consistent throughout the rules. These changes are intended to be stylistic only.

Rule 25(b)(2) addresses the possibility of a new trial when a judge determines that no other judge could perform post-trial duties or when the judge determines that there is some other reason for doing so. The current rule indicates that those reasons must be "appropriate." The Committee, however, believed that a better term would be "necessary," because that term includes notions of manifest necessity. No change in meaning or practice is intended.

Rule 26. Taking of Testimony	Rule 26. Taking Testimony
In all trials the testimony of witnesses shall be taken orally in open court, unless otherwise provided by an Act of Congress, or by these rules, the Federal Rules of Evidence, or other rules adopted by the Supreme Court.	In all trials the testimony of witnesses must be taken orally in open court, unless otherwise provided by an Act of Congress or by rules adopted under 28 U.S.C. §§ 2072-2077.

COMMITTEE NOTE

The language of Rule 26 has been amended as part of the general restyling of the Criminal Rules to make them more easily understood and to make style and terminology consistent throughout the rules. These changes are intended to be stylistic only.

REPORTER'S NOTES

In publishing the "style" changes to the Federal Rules of Criminal Procedure, the Committee decided to publish separately any rule that includes what it considered at least one major substantive change. The purpose for this separate publication is to highlight for the bench and the bar any proposed amendments that the Committee believes will result in significant changes in current practice. Rule 26 is one of those rules. This proposed revision of Rule 26 includes only style changes. Another version of Rule 26, which includes an amendment that would authorize a court to receive testimony from a remote location, is being published simultaneously in a separate pamphlet.

Rule 26.1. Determination of Foreign Law	Rule 26.1. Foreign Law Determination
<p>A party who intends to raise an issue concerning the law of a foreign country shall give reasonable written notice. The court, in determining foreign law, may consider any relevant material or source, including testimony, whether or not submitted by a party or admissible under the Federal Rules of Evidence. The court's determination shall be treated as a ruling on a question of law.</p>	<p>A party intending to raise an issue of foreign law must provide the court and all parties with reasonable written notice. Issues of foreign law are questions of law, but in deciding such issues a court may consider any relevant material or source — including testimony — without regard to the Federal Rules of Evidence.</p>

COMMITTEE NOTE

The language of Rule 26.1 has been amended as part of the general restyling of the Criminal Rules to make them more easily understood and to make style and terminology consistent throughout the rules. These changes are intended to be stylistic only.

Rule 26.2. Production of Witness Statements	Rule 26.2. Producing a Witness's Statement
<p>(a) Motion for Production. After a witness other than the defendant has testified on direct examination, the court, on motion of a party who did not call the witness, shall order the attorney for the government or the defendant and the defendant's attorney, as the case may be, to produce, for the examination and use of the moving party, any statement of the witness that is in their possession and that relates to the subject matter concerning which the witness has testified.</p>	<p>(a) Motion to Produce. After a witness other than the defendant has testified on direct examination, the court, on motion of a party who did not call the witness, must order an attorney for the government or the defendant and the defendant's attorney, as the case may be, to produce, for the examination and use of the moving party, any statement of the witness that is in the possession and that relates to the subject matter of the witnesses's testimony.</p>
<p>(b) Production of Entire Statement. If the entire contents of the statement relate to the subject matter concerning which the witness has testified, the court shall order that the statement be delivered to the moving party.</p>	<p>(b) Producing the Entire Statement. If the entire statement relates to the subject matter of the witness's testimony, the court must order that the statement be delivered to the moving party.</p>
<p>(c) Production of Excised Statement. If the other party claims that the statement contains privileged information or matter that does not relate to the subject matter concerning which the witness has testified, the court shall order that it be delivered to the court in camera. Upon inspection, the court shall excise the portions of the statement that are privileged or that do not relate to the subject matter concerning which the witness has testified, and shall order that the statement, with such material excised, be delivered to the moving party. Any portion of the statement that is withheld from the defendant over the defendant's objection must be preserved by the attorney for the government, and, if the defendant appeals a conviction, must be made available to the appellate court for the purpose of determining the correctness of the decision to excise the portion of the statement.</p>	<p>(c) Producing a Redacted Statement. If the party who called the witness claims that the statement contains information that is privileged or does not relate to the subject matter of the witness's testimony, the court must inspect the statement in camera. After excising any privileged or unrelated portions, the court must order delivery of the redacted statement to the moving party. If the defendant objects to an excision, the court must preserve the entire statement with the excised portion indicated, under seal, as part of the record.</p>
<p>(d) Recess for Examination of Statement. Upon delivery of the statement to the moving party, the court, upon application of that party, may recess the proceedings so that counsel may examine the statement and prepare to use it in the proceedings.</p>	<p>(d) Recess to Examine a Statement. The court may recess the proceedings to allow time for a party to examine the statement and prepare for its use.</p>
<p>(e) Sanction for Failure to Produce Statement. If the other party elects not to comply with an order to deliver a statement to the moving party, the court shall order that the testimony of the witness be stricken from the record and that the trial proceed, or, if it is the attorney for the government who elects not to comply, shall declare a mistrial if required by the interest of justice.</p>	<p>(e) Sanction for Failure to Produce or Deliver a Statement. If the party who called the witness disobeys an order to produce or deliver a statement, the court must strike the witness's testimony from the record. If an attorney for the government disobeys the order, the court must declare a mistrial if justice so requires.</p>

<p>(f) Definition. As used in this rule, a "statement" of a witness means:</p> <ul style="list-style-type: none"> (1) a written statement made by the witness that is signed or otherwise adopted or approved by the witness; (2) a substantially verbatim recital of an oral statement made by the witness that is recorded contemporaneously with the making of the oral statement and that is contained in a stenographic, mechanical, electrical, or other recording or a transcription thereof; or (3) a statement, however taken or recorded, or a transcription thereof, made by the witness to a grand jury. 	<p>(f) Definition. As used in this rule, a witness's "statement" means:</p> <ul style="list-style-type: none"> (1) a written statement that the witness makes and signs, or otherwise adopts or approves; (2) a substantially verbatim, contemporaneously recorded recital of the witness's oral statement that is contained in any recording or any transcription of a recording; or (3) the witness's statement to a grand jury, however taken or recorded, or a transcription of such a statement.
<p>(g) Scope of Rule. This rule applies at a suppression hearing conducted under Rule 12, at trial under this rule, and to the extent specified:</p> <ul style="list-style-type: none"> (1) in Rule 32(c)(2) at sentencing; (2) in Rule 32.1(c) at a hearing to revoke or modify probation or supervised release; (3) in Rule 46(i) at a detention hearing; (4) in Rule 8 of the Rules Governing Proceedings under 28 U.S.C. § 2255; and (5) in Rule 5.1 at a preliminary examination. 	<p>(g) Scope. This rule applies at trial, at a suppression hearing under Rule 12, and to the extent specified in the following rules:</p> <ul style="list-style-type: none"> (1) Rule 5.1(h) (preliminary hearing); (2) Rule 32(h)(2) (sentencing); (3) Rule 32.1(e) (hearing to revoke or modify probation or supervised release); (4) Rule 46(j) (detention hearing); and (5) Rule 8 of the Rules Governing Proceedings under 28 U.S.C. § 2255.

COMMITTEE NOTE

The language of Rule 26.2 has been amended as part of the general restyling of the Criminal Rules to make them more easily understood and to make style and terminology consistent throughout the rules. These changes are intended to be stylistic only, except as noted below.

Current Rule 26.2(c) states that if the court withholds a portion of a statement, over the defendant's objection, "the attorney for the government" must preserve the statement. The Committee believed that the better rule would be for the court to simply seal the entire statement as a part of the record, in the event that there is an appeal.

Also, the terminology in Rule 26.2(c) has been changed. The rule now speaks in terms of a "redacted" statement instead of an "excised" statement. No change in practice is intended.

Finally, the list of proceedings has been placed in numerical order by rule in Rule 26.2(g).

Rule 26.3. Mistrial	Rule 26.3. Mistrial
<p>Before ordering a mistrial, the court shall provide an opportunity for the government and for each defendant to comment on the propriety of the order, including whether each party consents or objects to a mistrial, and to suggest any alternatives.</p>	<p>Before ordering a mistrial, the court must give each defendant and the government an opportunity to comment on the propriety of the order, to state whether that party consents or objects, and to suggest alternatives.</p>

COMMITTEE NOTE

The language of Rule 26.3 has been amended as part of the general restyling of the Criminal Rules to make them more easily understood and to make style and terminology consistent throughout the rules. These changes are intended to be stylistic only.

Rule 27. Proof of Official Record	Rule 27. Proof of Official Record
An official record or an entry therein or the lack of such a record or entry may be proved in the same manner as in civil actions.	A party may prove an official record, an entry in such a record, or the lack of a record or entry in the same manner as in a civil action.

COMMITTEE NOTE

The language of Rule 27 has been amended as part of the general restyling of the Criminal Rules to make them more easily understood and to make style and terminology consistent throughout the rules. These changes are intended to be stylistic only.

Rule 28. Interpreters	Rule 28. Interpreters
The court may appoint an interpreter of its own selection and may fix the reasonable compensation of such interpreter. Such compensation shall be paid out of funds provided by law or by the government, as the court may direct.	The court may select, appoint, and fix the reasonable compensation for an interpreter. The compensation must be paid from funds provided by law or by the government, as the court may direct.

COMMITTEE NOTE

The language of Rule 28 has been amended as part of the general restyling of the Criminal Rules to make them more easily understood and to make style and terminology consistent throughout the rules. These changes are intended to be stylistic only.

Rule 29. Motion for Judgment of Acquittal	Rule 29. Motion for Judgment of Acquittal
<p>(a) Motion Before Submission to Jury. Motions for directed verdict are abolished and motions for judgment of acquittal shall be used in their place. The court on motion of a defendant or of its own motion shall order the entry of judgment of acquittal of one or more offenses charged in the indictment or information after the evidence on either side is closed if the evidence is insufficient to sustain a conviction of such offense or offenses. If the defendant's motion for judgment of acquittal at the close of the evidence offered by the government is not granted, the defendant may offer evidence without having reserved the right.</p>	<p>(a) Before Submission to the Jury. After the government closes its evidence or after the close of all the evidence, the court on the defendant's motion must enter a judgment of acquittal of any offense as to which the evidence is insufficient to sustain a conviction. The court may on its own consider whether the evidence is insufficient to sustain a conviction. If the court denies a motion for judgment of acquittal at the close of the government's evidence, the defendant may offer evidence without having reserved the right to do so.</p>
<p>(b) Reservation of Decision on Motion. The court may reserve decision on a motion for judgment of acquittal, proceed with the trial (where the motion is made before the close of all the evidence), submit the case to the jury and decide the motion either before the jury returns a verdict or after it returns a verdict of guilty or is discharged without having returned a verdict. If the court reserves a decision, it must decide the motion on the basis of the evidence at the time the ruling was reserved.</p>	<p>(b) Reserving Decision. The court may reserve decision on a motion for judgment of acquittal, proceed with the trial (where the motion is made before the close of all the evidence), submit the case to the jury and decide the motion either before the jury returns a verdict or after it returns a verdict of guilty or is discharged without having returned a verdict. If the court reserves decision, it must decide the motion on the basis of the evidence at the time the ruling was reserved.</p>
<p>(c) Motion After Discharge of Jury. If the jury returns a verdict of guilty or is discharged without having returned a verdict, a motion for judgment of acquittal may be made or renewed within 7 days after the jury is discharged or within such further time as the court may fix during the 7-day period. If a verdict of guilty is returned the court may on such motion set aside the verdict and enter judgment of acquittal. If no verdict is returned the court may enter judgment of acquittal. It shall not be necessary to the making of such a motion that a similar motion has been made prior to the submission of the case to the jury.</p>	<p>(c) After Jury Verdict or Discharge.</p> <ol style="list-style-type: none"> (1) <i>In General.</i> A defendant may move for judgment of acquittal, or renew such a motion, within 7 days after a guilty verdict or after the court discharges the jury, whichever is later, or within any other time the court fixes during the 7-day period. (2) <i>Ruling on Motion.</i> If the jury has returned a guilty verdict, the court may set aside the verdict and enter an acquittal. If the jury has failed to return a verdict, the court may enter judgment of acquittal. (3) <i>No Prior Motion.</i> A defendant is not required to move for judgment of acquittal before the court submits the case to the jury as a prerequisite for making such a motion after jury discharge.

(d) **Same: Conditional Ruling on Grant of Motion.** If a motion for judgment of acquittal after verdict of guilty under this Rule is granted, the court shall also determine whether any motion for a new trial should be granted if the judgment of acquittal is thereafter vacated or reversed, specifying the grounds for such determination. If the motion for a new trial is granted conditionally, the order thereon does not affect the finality of the judgment. If the motion for a new trial has been granted conditionally and the judgment is reversed on appeal, the new trial shall proceed unless the appellate court has otherwise ordered. If such motion has been denied conditionally, the appellee on appeal may assert error in that denial, and if the judgment is reversed on appeal, subsequent proceedings shall be in accordance with the order of the appellate court.

(d) **Conditional Ruling on a Motion for a New Trial.**

- (1) ***Motion for a New Trial.*** If the court enters a judgment of acquittal after a guilty verdict, the court must also conditionally determine whether any motion for a new trial should be granted if the judgment of acquittal is later vacated or reversed. The court must specify the reasons for that determination.
- (2) ***Finality.*** The court's order conditionally granting a motion for a new trial does not affect the finality of the judgment of acquittal.
- (3) ***Appeal.***
 - (A) ***Grant of a Motion for a New Trial.*** If the court conditionally grants a motion for a new trial, and an appellate court later reverses the judgment of acquittal, the trial court must proceed with the new trial unless the appellate court orders otherwise.
 - (B) ***Denial of a Motion for a New Trial.*** If the court conditionally denies a motion for a new trial, an appellee may assert that the denial was erroneous. If the appellate court later reverses the judgment of acquittal, the trial court must proceed as the appellate court directs.

COMMITTEE NOTE

The language of Rule 29 has been amended as part of the general restyling of the Criminal Rules to make them more easily understood and to make style and terminology consistent throughout the rules. These changes are intended to be stylistic only, except as noted below.

In Rule 29(a), the first sentence abolishing "directed verdicts" has been deleted because it is unnecessary. The rule continues to recognize that a judge may sua sponte enter a judgment of acquittal.

Rule 29(c)(1) addresses the issue of the timing of a motion for acquittal. The amended rule now includes language that the motion must be made within 7 days after a guilty verdict or after the judge discharges the jury, whichever occurs later. That change reflects the fact that in a capital case or in a case involving criminal forfeiture, for example, the jury may not be discharged until it has completed its sentencing duties. The court may still set another time for the defendant to make or renew the motion, if it does so within the 7-day period.

Rule 29.1. Closing Argument	29.1. Closing Argument
<p>After the closing of evidence the prosecution shall open the argument. The defense shall be permitted to reply. The prosecution shall then be permitted to reply in rebuttal.</p>	<p>Closing arguments proceed in the following order:</p> <ul style="list-style-type: none"> (a) the government argues; (b) the defense argues; and (c) the government rebuts.

COMMITTEE NOTE

The language of Rule 29.1 has been amended as part of the general restyling of the Criminal Rules to make them more easily understood and to make style and terminology consistent throughout the rules. These changes are intended to be stylistic only.

Rule 30. Instructions	Rule 30. Jury Instructions
<p>At the close of the evidence or at such earlier time during the trial as the court reasonably directs, any party may file written requests that the court instruct the jury on the law as set forth in the requests. At the same time copies of such requests shall be furnished to all parties. The court shall inform counsel of its proposed action upon the requests prior to their arguments to the jury. The court may instruct the jury before or after the arguments are completed or at both times. No party may assign as error any portion of the charge or omission therefrom unless that party objects thereto before the jury retires to consider its verdict, stating distinctly the matter to which that party objects and the grounds of the objection. Opportunity shall be given to make the objection out of the hearing of the jury and, on request of any party, out of the presence of the jury.</p>	<p>(a) In General. Any party may request in writing that the court instruct the jury on the law as specified in the request. The request must be made at the close of the evidence or at any earlier time during the trial that the court reasonably directs. When the request is made, the requesting party must furnish a copy to every other party.</p> <p>(b) Ruling on a Request. The court must inform the parties before closing arguments how it intends to rule on the requested instructions.</p> <p>(c) Time for Giving Instructions. The court may instruct the jury before or after the arguments are completed, or at both times.</p> <p>(d) Objections to Instructions. A party who objects to any portion of the instructions or to a failure to give a requested instruction must inform the court of the specific objection and the grounds for the objection before the jury retires to deliberate. An opportunity must be given to object out of the jury's hearing and, on request, out of the jury's presence.</p>

COMMITTEE NOTE

The language of Rule 30 has been amended as part of the general restyling of the Criminal Rules to make them more easily understood and to make style and terminology consistent throughout the rules. These changes are intended to be stylistic only, except as noted, below.

Rule 30(d) has been changed to clarify what, if anything, counsel must do to preserve error regarding an instruction or failure to instruct. The rule retains the requirement of a contemporaneous and specific objection (before the jury retires to deliberate). As the Supreme Court recognized in *Jones v. United States*, 527 U.S. 373, 388 (1999), read literally, current Rule 30 could be construed to bar any appellate review when in fact a court may conduct a limited review under a plain error standard. The topic of plain error is not addressed in Rule 30 because it is already covered in Rule 52. No change in practice is intended by the amendment.

REPORTER'S NOTES

In publishing the "style" changes to the Federal Rules of Criminal Procedure, the Committee decided to publish separately any rule that includes what it considered at least one major substantive change. The purpose for this separate publication is to highlight for the bench and the bar any proposed amendments that the Committee believes will result in significant changes in current practice. Rule 30 is one of those rules. This proposed revision of Rule 30 includes only proposed style changes. Another version of Rule 30 includes a substantive amendment that would authorize a court to require the parties to file requests for instructions before trial. That version of Rule 30 is being published simultaneously in a separate pamphlet.

Rule 31. Verdict	Rule 31. Jury Verdict
(a) Return. The verdict shall be unanimous. It shall be returned by the jury to the judge in open court.	(a) Return. The jury must return its verdict to a judge in open court. The verdict must be unanimous.
(b) Several Defendants. If there are two or more defendants, the jury at any time during its deliberations may return a verdict or verdicts with respect to a defendant or defendants as to whom it has agreed; if the jury cannot agree with respect to all, the defendant or defendants as to whom it does not agree may be tried again.	(b) Partial Verdicts, Mistrial, and Retrial. (1) Multiple Defendants. If there are multiple defendants, the jury may return a verdict at any time during its deliberations as to any defendant as to whom it has agreed. (2) Multiple Counts. If the jury cannot agree on all counts as to any defendant, the jury may return a verdict on those counts as to which it has agreed. (3) Mistrial and Retrial. If the jury cannot agree on a verdict as to all counts, the court may declare a mistrial as to those counts. The government may retry any defendant on any count as to which the jury could not agree.
(c) Conviction of Less Offense. The defendant may be found guilty of an offense necessarily included in the offense charged or of an attempt to commit either the offense charged or an offense necessarily included therein if the attempt is an offense.	(c) Lesser Offense or Attempt. A defendant may be found guilty of any of the following: (1) an offense necessarily included in the offense charged; (2) an attempt to commit the offense charged; or (3) an attempt to commit an offense necessarily included in the offense charged, if the attempt is an offense in its own right.
(d) Poll of Jury. After a verdict is returned but before the jury is discharged, the court shall, on a party's request, or may on its own motion, poll the jurors individually. If the poll reveals a lack of unanimity, the court may direct the jury to deliberate further or may declare a mistrial and discharge the jury.	(d) Jury Poll. After a verdict is returned but before the jury is discharged, the court must on a party's request, or may on its own, poll the jurors individually. If the poll reveals a lack of unanimity, the court may direct the jury to deliberate further or may declare a mistrial and discharge the jury.
(e) Criminal Forfeiture. [Abrogated] ²	(e) Criminal Forfeiture. [Abrogated]

² Supreme Court approved amendment in April 2000. The amendments take effect on December 1, 2000, unless Congress takes action otherwise.

COMMITTEE NOTE

The language of Rule 31 has been amended as part of the general restyling of the Criminal Rules to make them more easily understood and to make style and terminology consistent throughout the rules. These changes are intended to be stylistic only.

Rule 31(b) has been amended to clarify that a jury may return partial verdicts, either as to multiple defendants or multiple counts, or both. *See, e.g., United States v. Cunningham*, 145 F.3d 1385, 1388-89 (D.C. Cir. 1998) (partial verdicts on multiple defendants and counts). No change in practice is intended.